

089844-032537



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

PETER ALSBERG ET AL.

Serial No.: 09/726,573

Filed: December 1, 2000

For: METHODS AND SYSTEMS FOR
MARKET CLEARANCE

Art Unit: 3624

Examiner: Campen, Kelly Scaggs

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notification of Non-Complaint Appeal Brief (“Notification”) mailed August 23, 2006, please find attached a revised version of the Appeal Brief, which was originally filed June 5, 2006.

In the attached revised document, express reference has been made to the specification and drawings for the subject matter recited in independent claim 16 and dependent claims 3, 5, 10 and 17.

It is believed that this revised Appeal Brief addresses all of the concerns raised in the Notification, and prompt action on this Appeal is therefore respectfully requested.

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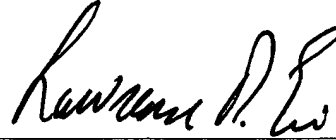
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APPEAL BRIEF

Mail Stop Appeal Brief - Patents
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P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 35 U.S.C. §134 and C.F.R. §41.31, Appellants submit this Appeal Brief to appeal the Examiner's rejection of claims 1-24 in the final Office Action mailed October 19, 2005.



U.S. Application Serial No.: 09/726,573
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I. REAL PARTY IN INTEREST

The named inventors have not assigned their interests in the pending application.

Accordingly, the real party in interest comprises the named inventors Peter Alsberg and Andrew Wise.

II. RELATED APPEALS AND INTERFERENCES

The appellants and their legal representatives are not aware of any other pending appeals, interferences or judicial proceedings which may be related to, will directly affect or be directly affected by, or have a bearing on the Board's decision in this appeal.

III. STATUS OF THE CLAIMS

Claims 25-87 are canceled. Claims 1-24 stand rejected. Claims 1-6 and 8-24 were previously separately rejected under 35 U.S.C. §101, but that ground of rejection was withdrawn in the Notice of Panel Decision from Pre-Appeal Brief Review mailed May 8, 2006. Accordingly, only the rejection of claims 1-24, based on prior art, is being appealed.

IV. STATUS OF AMENDMENTS

No claim amendments have been made in this application in response to the last Office Action dated October 19, 2005. The status of the claims in this application is as set forth above and in Appendix A.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The presently claimed invention provides a meeting place where buyers and sellers can efficiently find each other, make individual offers to buy and sell products with varying attributes at varying prices with varying fulfillment costs, aggregate their collective demand or supply, and produce many-to-many transactions at multiple prices at the same time. See, page 8, lines 5-9 of the present application.

In this same vein, claim 1 of the present application expressly recites a computer-implemented method for clearing offers, where the offers themselves specify conditions for acceptance. Two types of offers are recited in the claim: advantaged offers and disadvantaged offers.

An “advantaged offer” is one which, once associated, will necessarily be transacted upon, either in accordance with the originally-offered terms, or in accordance with better terms. A “disadvantage offer,” on the other hand, is an offer which, once associated, may subsequently become disassociated, such that the offer may not be transacted upon. In other words, an “advantaged offer” has the essence of a guarantee at the originally-offered terms or better, whereas a disadvantaged offer has no such guarantee. This is precisely what makes an advantaged offer “advantaged” as compared to a disadvantaged offer. These concepts are discussed at, for example, page 16, lines 1-7 of the pending application:

In a given pool, the lock prices of advantaged offers improve during an offering period. Lower prices are more favorable to buyers and higher prices more favorable to sellers. Thus, in a buyer-advantaged pool, prices locked to individual buy offers decrease during the offering period, as lower sell offers are received. In a seller-advantaged pool, prices locked to individual

sell offers will increase during the offering period, as higher buy offers are received.

Turning again to the recited claim language, and in accordance with the method recited in claim 1, a plurality of advantaged offers are received. Each advantaged offer is then associated “with one or more available most-favorable disadvantaged offers, wherein the conditions of acceptance of each advantaged offer are met by each disadvantaged offer that has been associated with the advantaged offer.” The claimed method then requires “changing the association of at least one associated advantaged offer to a newly-available disadvantaged offer that offers more favorable terms than a currently associated disadvantaged offer, when the newly available disadvantaged offer is received and meets the conditions of acceptance of the associated advantaged offer.” In other words, the terms of an advantaged offer are improved by re-associating that advantaged offer with a newly-received disadvantaged offer. More specifically, an advantaged offer's terms improve **dynamically** (and repeatedly) with the **relocking** (reassociating) of newly-received acceptable disadvantaged offers.

The steps of first associating a pair of advantaged and disadvantaged offers and then changing the association of a given advantaged offer to a newly-available disadvantaged offer is fundamental to the present invention and is what makes possible the many-to-many transactions that is one of the goals of the instant invention.

Independent claim 16 recites, among other limitations, substantially these same features of “changing the association”. The other limitations of independent claim 16 are described in the paragraph bridging pages 42 and 43 of the specification and in Figure 13A (1314, 1316, 131, 1320, 1322, 1324).

Several of the dependent claims are also particularly worthy of separate discussion.

Beginning first with claims dependent from claim 1, claim 3, for example, recites that to determine which disadvantaged offers have more favorable specifications, attributes of one of the advantaged offers are applied to a price function of the disadvantaged offer to calculate a price. In other words, multiple attributes of advantaged offers are used as inputs to a price function of a disadvantaged offer to calculate price. This is a unique methodology for matching or associating advantaged and disadvantaged offers with one another. A description of the price function (820) can be found at page 32 of the specification and is shown in Figure 8.

Dependent claim 5 further limits claim 3 and recites applying a weighting function to the calculated price of claim 3. An exemplary description of weighting function 740 can be found at page 31 of the specification and in Figure 7.

Dependent claim 10 adds a completely new dimension to the methodology by which offers in accordance with the present invention are associated with one another. Dependent claim 10 recites that associating is performed “in order of priority of the advantaged offers, such priority being determined by the order in which the advantaged offers were received.” That is, in accordance with dependent claim 10, the timing of when a particular offer is received is used as a metric in determining how to initially associate and later re-associate that offer. Page 51 of the specification and Figure 15 disclose timestamps (1560) that are used for sorting.

For claims dependent from independent claim 16, claim 17 requires that a transaction description include a “stepped-price schedule” (1330) and “generating an uninterrupted sequence of offers,” each “corresponding to a price step in the stepped-price schedule” as shown

in Figure 13B, and as described on pages 44-45 of the specification. This is still another detail regarding the mechanism used to match or associate offers.

Dependent claim 21 introduces a specified "straddle limit" that is included in the transaction, and dependent claim 22 (which depends from claim 21) requires monitoring the marketplace and adding an offer corresponding to the straddle. Pages 35-42 of the present application discuss the use of straddles. A straddle is the set of multiple advantaged offers, which describe offerer-defined product-attribute trade-offs across different related, complementary, or substitute products. Each product-attribute-specific offer appears to be a separate advantaged offer, which together are then constrained by a straddle limit as to how many offers or products can be associated. When the limit is reached (the specified number of products or offers are associated), remaining offers that are not associated are withdrawn. For example, a buyer who likes blue family sedans and is deciding between two competing manufacturers' models might place a two-product straddle, almost certainly to be fulfilled by different dealers (and therefore different disadvantaged offers): an advantaged offer for one dark blue pearl metallic 2006 Ford Fusion SEL V6 with specified options for \$24,600 excluding tax and license, delivered to his home in McLean VA by July 1, 2006, plus a second advantaged offer for one laser blue metallic 2006 Chevrolet Malibu LT for \$23,250 with specified options excluding tax and license, delivered to his home in McLean VA by July 1, 2006, with a straddle limit of only one of the two cars, not both. Notably, once an initial association is made with a disadvantaged offer, the second (or all remaining) un-associated advantaged offer(s) is withdrawn. A logical extension of this straddle concept could apply across cars by the same manufacturer that differ in a product

attribute, say color or option package. For example, a two-product straddle of this type with a color tradeoff: an advantaged offer for one dark blue pearl metallic 2006 Ford Fusion SEL V6 with specified options for \$24,600 excluding tax and license, delivered to his home in McLean VA by July 1, 2006, plus a second advantaged offer for one redfire clearcoat metallic 2006 Ford Fusion SEL V6 with specified options for \$23,200 excluding tax and license, delivered to his home in McLean VA by July 1, 2006. In this case, the offerer is implicitly placing a \$1,400 higher value on the blue car. Of course, one could put all three of these offers together in a single straddle, each with their own terms and prices – the blue Fusion *or* the red Fusion *or* the blue Malibu, but only *one*. Further, any initially-associated offer then receives all potential improvements of terms from re-association as in the earlier claims.

VI. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

The sole ground of rejection to be reviewed on appeal is:

Claims 1-24 under 35 U.S.C. §102(e) over Van Horn et al. (U.S. Patent 6,631,356 B1).

VII. ARGUMENT

A. The 35 U.S.C. §102(e) rejection of claims 1-24 based on Van Horn et al. is improper and should be withdrawn.

To anticipate a patent claim, the cited reference must teach every element of the claim. Although identity of terminology is not required, the “identical invention must be shown in as complete detail as is contained in the...claim.” MPEP § 2131, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989) (emphasis added). U.S. Patent 6,631,356 B1 to Van Horn et al. (“Van Horn”), the sole reference cited against the claims pending in this application, falls far short of this mark.

Van Horn describes aggregating potential buyers into an online “co-op” whereby a “tremendous shift in power from the seller of goods and services to the buyer of goods and services” is enabled. Col. 3, lines 61-62. In contrasting the described methodology in Van Horn with a standard auction, Van Horn states:

Rather than providing a method by which numerous buyers compete against one another to be the “winner” at the highest price, this method enables buyers to join forces to achieve a lower price at which they all “win.”

Col. 4, lines 27-31.

Thus, from these and other portions of Van Horn, it is evident that Van Horn is focused on demand or buyer aggregation through a co-op, wherein a single seller offer from a single seller at a starting price will trigger multiple buyer offers at the starting price, or below. No other conditions, beyond price, are included in Van Horn buyer offers. From the perspective of the present invention, there is no provision/possibility in Van Horn for supply or seller aggregation, as there is no provision for multiple sellers. Consequently, there is no mechanism that would cause price to rise during an offering period, as would be desirable for trade in products for which there is limited supply and excess demand. The present invention, on the other hand, is designed to operate under such conditions.

When a co-op finally closes, a final price is fixed and applied to all received buyer offers at or above the final price, and the successful buyers are so notified. See, Col. 12, lines 21-36.

The differences between the claimed invention and Van Horn are evident and numerous.

First, as noted, Van Horn discloses only one metric by which buyer offers are accepted or rejected, namely price. No other offer conditions are required. In contrast, claim 1 of the

present application requires conditions (i.e., plural conditions) of acceptance in connection with (advantaged) offers. These conditions might correspond to, for example, those recited in dependent claim 12, including a product specification (e.g., size, color, optional features, etc.), quantity specifications, pool specification and fragment list, among others. In other words, in the claimed invention, the conditions of every offer can differ from every other offer and produce both demand and supply aggregation among different products offered at different terms and closing at different prices. There is simply no notion of multiple or plural conditions being required of buyer offers in Van Horn. Buyer offers in Van Horn are based on only a single metric, not plural metrics (or “conditions”). For this reason alone the claims of the present application should be allowable over the Van Horn prior art.

Second, the expressed basis for the §102(e) rejection in the final Office Action simply refers to the rejection set forth in the Office Action mailed April 21, 2005. However, the details in that earlier Office Action make no mention of how or where Van Horn discloses either of the recited “advantaged offers” and “disadvantaged offers.” Again, for a reference to anticipate a claim, each and every one of the elements must be disclosed by that reference. However, Van Horn is, in fact, totally silent on a methodology that employs these different types of offers. In view of Van Horn’s total lack of disclosure regarding the “advantaged” and “disadvantaged” offer limitations, the claims should be allowable over this prior art for this additional reason.

Finally, even if, *arguendo*, one were to deny giving any patentable weight to the “conditions” limitation or the terms “advantaged offers” and “disadvantaged offers” (which Applicants strongly assert would be improper), Van Horn still does not disclose a basic feature of

independent claims 1 and 16 that makes the goal of supporting many-to-many transactions possible.

Specifically, claim 1 requires re-associating an advantaged offer (e.g., a buyer offer) to a newly available disadvantaged offer (e.g., a seller offer) that offers more favorable terms. In Van Horn, buyer offers are “advantaged” since the multiple buyers in Van Horn have the ability to push prices down. Also, in Van Horn, there is only ONE seller offer per co-op, and no more. Claim 1 requires a “newly available disadvantaged offer” (i.e., one that comes in after a pair of offers (buy and sell) have already been associated). That is, claim 1 requires that there be at least TWO disadvantaged offers (e.g., seller offers in Van Horn) that are available at a given time (one that was originally associated, and another that will be newly associated). However, nothing in Van Horn indicates that its co-op system can handle multiple buyer offers AND multiple seller offers. On the other hand, this is precisely the purpose of the instant invention as claimed: to handle multiple buyers and sellers, and come to different pricing and conditions agreements for different pairings, matches or associations.

The steps of first associating advantaged and disadvantaged offers and then changing the association of an already associated advantaged offer to a newly available disadvantaged offer is fundamental to the present invention, and is expressly claimed. However, this methodology is neither described nor contemplated by Van Horn, let alone “shown in as complete detail as is contained” in the claims.

For still this additional reason, the claims of the present application should be allowable over Van Horn.

Independent claim 16 recites very similar subject matter and should be allowable for at least the same reasons set forth above.

DEPENDENT CLAIMS

In addition to the very clear deficiencies in the disclosure of Van Horn as compared to the limitations expressly recited in the independent claims, the disclosure of Van Horn is also clearly deficient in disclosing limitations expressly recited by many of the dependent claims pending in this application.

As discussed above, claim 3 recites that, to determine which disadvantaged offers have more favorable specifications, attributes of one of the advantaged offers are applied to a price function of the disadvantaged offer to calculate a price. In other words, multiple attributes of advantaged offers are used as inputs to a price function of a disadvantaged offer to calculate price. No such functionality is disclosed in Van Horn, as there are no attributes named.

Dependent claim 5 recites applying a weighting function to the calculated price of dependent claim 3. Again, Van Horn is silent regarding this type of functionality.

Dependent claim 10 recites that "associating" is performed "in order of priority of the advantaged offers, such priority being determined by the order in which the advantaged offers were received." That is, in accordance with dependent claim 10, the timing of when a particular offer is received is used as a metric in determining how to associate that offer. Van Horn discloses absolutely nothing about monitoring, or relying in any way on, the order in which offers are received. When timing is relied upon for causing matching, one can easily appreciate how different pairs of matched offers can settle at different prices, for example. In Van horn, in

contrast, all buyers always receive the same final price, regardless of the time at which buyer offers are received. See, e.g., col. , lines 17-18 of Van Horn.

Claims dependent from independent claim 16 also recite subject matter that is not disclosed by Van Horn. For example, claim 17 requires that a transaction description include a “stepped-price schedule” and “generating an uninterruptible sequence of offers,” each “corresponding to a price step in the stepped-price schedule.” Van Horn is totally silent with respect to this subject matter.

Dependent claim 21 introduces a specified “straddle limit” that is included in the transaction (as explained in the Summary section above), and dependent claim 22 (which depends from claim 21) requires monitoring the marketplace and adding an offer corresponding to the straddle. Again, Van Horn is devoid of any description of this methodology.

B. Conclusion

For all of the above reasons, it is respectfully submitted that the pending claims of the present application cannot possibly be anticipated by Van Horn. Accordingly, the Board should overturn the sole pending ground of rejection.

VIII. LISTING OF CLAIMS

(See Appendix A)

IX. EVIDENCE APPENDIX

(None.)

X. RELATED PROCEEDINGS APPENDIX

(None.)

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Respectfully submitted,

PETER ALSBERG ET AL.

Date: September 7, 2006

By:

A handwritten signature in black ink, appearing to read "Lawrence D. Eisen", written over a horizontal line.

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APPENDIX A

Listing of Claims:

1. (Previously Presented) A computer-implemented method for clearing offers, which specify conditions for acceptance, and the method comprising:

receiving a plurality of advantaged offers;

associating each advantaged offer with one or more available most-favorable disadvantaged offers, wherein the conditions of acceptance of each advantaged offer are met by each disadvantaged offer that has been associated with the advantaged offer; and

changing the association of at least one associated advantaged offer to a newly available disadvantaged offer that offers more favorable terms than a currently associated disadvantaged offer, when the newly available disadvantaged offer is received and meets the conditions of acceptance of the associated advantaged offer.
2. (Previously Presented) A method according to claim 1, wherein the advantaged and disadvantaged offers are each associated with a pool and a corresponding pool close event.
3. (Previously Presented) A method according to claim 1, wherein the specified conditions for acceptance of the offers have attributes related to terms of acceptance of that offer, and

wherein determining which of the disadvantaged offers have more favorable specifications further comprises:

applying attributes of one of the advantaged offers to a price function for one of the disadvantaged offers to calculate a price.

4. (Original) A method according to claim 3, wherein the calculated price includes all appropriate costs.

5. (Previously Presented) A method according to claim 3, wherein determining which of the disadvantaged offers have more favorable specifications further comprises:

applying a weighting function to the calculated price.

6. (Previously Presented) A method according to claim 3, wherein applying attributes of one of the advantaged offers comprises:

using as the price function a table in which price ranges correspond to attributes of an advantaged offer.

7. (Previously Presented) A method according to claim 3, wherein applying attributes of one of the advantaged offers comprises:

using as the price function a computer program capable of defining a price based on attributes of an advantaged offer.

8. (Previously Presented) A method according to claim 1, wherein the specifications of conditions for acceptance of the offers include price specifications, and

wherein determining which disadvantaged offers have more favorable specifications further comprises:

comparing price specifications.

9. (Original) A method according to claim 8, wherein the price specifications are constant prices, and

wherein comparing the price specifications comprises:

comparing constant prices.

10. (Previously Presented) A method according to claim 1, wherein associating each advantaged offer with one or more of the most favorable available disadvantaged offers is performed:

in order of priority of the advantaged offers, such priority being determined by the order in which the advantaged offers were received.

11. (Previously Presented) A method according to claim 10, wherein the set of available disadvantaged offers comprise those disadvantaged offers that are not already associated with other offers.

12. (Previously Presented) A method according to claim 10, wherein the specifications of the conditions of acceptance of the advantaged offers further comprise:

a product specification, a quantity specification, a pool specification, and a fragment list;
and

wherein determining which disadvantaged offers have more favorable specifications includes:

examining the product specification, quantity specification, pool specification, and fragment list of the improvable offers.

13. (Previously Presented) A method according to claim 10, wherein the specifications of the conditions of acceptance of the disadvantaged offers further comprise:

a product specification, a quantity specification, a pool specification; and a fragment list;
and

wherein determining which disadvantaged offers have more favorable specifications includes:

examining the product specification, quantity specification, pool specification, and fragment list of the disadvantaged offers.

14. (Previously Presented) A method according to claim 12, wherein the quantity specification further comprises a minimum quantity and a maximum quantity; and

wherein determining which disadvantaged offers have more favorable specifications includes:

examining the minimum and maximum quantities.

15. (Previously Presented) A method according to claim 13, wherein the quantity specification further comprises:

a minimum quantity and a maximum quantity; and

wherein determining which disadvantaged offers have more favorable specifications includes:

examining the minimum and maximum quantities.

16. (Previously Presented) A computer-implemented method for generating events to be posted to a marketplace, the method comprising:

receiving a description of transactions to be offered in the marketplace;

expanding the description of transactions to be offered in the marketplace into at least one offer, with specified conditions of acceptance; and

generating a set of post events based on the at least one offer in a manner to cause the transactions to be offered in a marketplace in which a marketplace method for processing offers is used, and the marketplace method comprising:

receiving a plurality of advantaged offers;

associating each advantaged offer with one or more available most-favorable disadvantaged offers wherein, the conditions of acceptance of each advantaged offer are met by each disadvantaged offer that has been associated with the advantaged offer; and

changing the association of an advantaged offer to a newly available disadvantaged offer that offers more favorable terms than a currently associated disadvantaged offer, when the newly available disadvantaged offer is received and meets the conditions of acceptance of the associated advantaged offer.

17. (Original) A method according to claim 16, wherein the description of transactions is a stepped-price schedule having price breaks at each price step in the stepped-price schedule, and wherein generating a set of post events includes:

generating an uninterruptible sequence of offers, each offer in the sequence corresponding to a price step in the stepped-price schedule, and each offer having a reserve price equal to the price break of the price step.

18. (Original) A method according to claim 16, wherein the description of transactions is an all-or-none specification having a minimum quantity, and

wherein generating a set of post events includes:

posting an offer with a minimum quantity specification corresponding to the minimum quantity in the all-or-none specification.

19. (Original) A method according to claim 16, wherein the description of transactions is a fill-or-kill specification having a minimum quantity, and

wherein generating a set of post events includes:

posting an offer with a minimum quantity specification corresponding to the minimum quantity in the fill-or-kill specification; and

withdrawing the offer if the minimum quantity specification cannot be satisfied.

20. (Original) A method according to claim 16, wherein the description of transactions is a fill-and-withdraw specification having a desired quantity, and

wherein generating a set of post events includes:

posting an offer with a maximum quantity specification corresponding to the desired quantity in the fill-and-withdraw specification; and

withdrawing any quantity of the offer not immediately filled.

21. (Original) A method according to claim 16, wherein the events include straddles specifying a straddle limit, which restricts the number of associations, and

wherein generating a set of post events further comprises:

creating an offer corresponding to one of the descriptions;

adding the created offer to any corresponding straddles; and

generating a straddle including the created the offer if no corresponding straddles exist.

22. (Original) A method according to claim 21, further comprising the steps of:
monitoring the marketplace for new opportunities to post an offer corresponding to offers
in a posted straddle; and
adding an offer corresponding to the new opportunity to the posted straddle.

23. (Original) A method according to claim 16, wherein receiving a description of
offered transactions further includes:
providing a user interface to specify products in the offer.

24. (Original) A method according to claim 16, wherein generating a set of post events
further includes:
generating offers contingent on the occurrence of an event.

25-87. Cancelled.